



United States Mission to the OSCE

Response to OSCE Representative on Freedom of the Media Miklos Haraszti

As prepared for delivery by Ambassador Stephan M. Minikes
to the Permanent Council, Vienna
July 14, 2005

Thank you, Mr. Chairman.

It is a pleasure to welcome the Representative of Freedom of the Media back to the Permanent Council. Mr. Haraszti, the United States thanks you for your comprehensive report and for the work done by your office over the past three months.

Mr. Chairman, events in the OSCE region during the past several months have underscored the key role that a free media can play in providing transparency during crises, as well as in contributing to democratic processes.

Turning to the first of the five reports Mr. Haraszti has highlighted here today, the United States welcomes President Aliyev's practical moratorium on criminal procedures in cases dealing with libel and defamation, and his May 11 commitment to equal media access for all candidates in the upcoming parliamentary elections. There are still areas of concern with respect to media freedom, however, that require improvement.

For example, we strongly agree with the Representative's call to privatize government-controlled television stations and newspapers and to thoroughly investigate all cases of violence against journalists, including the need for fully accountability for all perpetrators of Elmar Huseynov's murder. The United States maintains that creating an independent media that is free from governmental retaliation is essential for democratization of Azerbaijan, especially in the time leading up to the November 2005 Parliamentary elections.

Although the Representative makes special note of decriminalizing libel and defamation in Azerbaijan, this call has implications for the entire OSCE. Criminal libel and defamation laws are never justified, especially when used to persecute opposition political figures or to restrict the press.

The United States welcomes the interest Mr. Haraszti has shown in preventing conflicts between the public duty and private interests of public officials. We agree that increasing the political independence of private media outlets is an important component of a strategy to promote media freedom.

That is why United States law acknowledges the need to ensure media pluralism by preventing the establishment of de facto media monopolies.

Mr. Haraszti's recommendations and assistance in response to legislation which would impact media freedom are also very helpful. In this context, we note that his cooperation with Turkish authorities resulted in positive changes to the new draft penal code to delete

provisions that would have increased the punishment for certain offenses, such as incitement or defamation, if committed through the media. The law as adopted by the government majority took into account many of Mr. Haraszti's concerns, but the Turkish Press Council continues to express concern that the law as implemented may restrict press freedom.

We share Mr. Haraszti's assessment that Turkey's law contradicts the prevailing practice in Europe by setting higher penalties for libel and defamation if directed at public officials rather than ordinary citizens. Libel and defamation should not carry criminal penalties, regardless of the victim.

Turning to the Representative's report on Uzbekistan, the United States regrets the Uzbek government's restrictions on media access to Andijon after the crisis there. Had there been free media on the scene, it might have brought clarity and transparency that could have mitigated this upheaval.

As we noted here on May 19, limitations on access to information contributed to alarm and anxiety over what really happened in Andijon. We therefore urge Uzbekistan to adhere to both the letter and the spirit of its own laws and to implement its OSCE commitments regarding freedom of the media.

We are troubled by the harassment experienced by journalists recently and urge the Government of Uzbekistan not to use or tolerate the threat of prosecution or physical violence to coerce journalists to discontinue their work, or allow violence against journalists -- whoever the perpetrator -- to go unpunished. We strongly urge the Government of Uzbekistan to prevent further attacks and harassment of journalists and to investigate and prosecute these attacks to the fullest extent under Uzbek law.

In Belarus, the United States is disturbed by reports of the recent passage of a decree to ban the use of the word "national" or "Belarusian" in names or titles of organizations and media publications as a deliberate attempt by the Government to de-register several independent newspapers. We therefore are highly appreciative of the Representative's efforts to raise these cases.

At the same time, we commend the authorities in Kosovo for their hard work on three legal initiatives that will significantly improve media freedom there. The authorities' willingness to consult media associations and journalists during this process contributed to better legislation and shows that when there is political will, positive legislative changes are possible.

Political will is also essential to put a stop to violence against journalists and to investigate and prosecute these unfortunate cases. We urge the authorities of Kosovo to bring to justice those responsible for the murder of journalist Bardhyl Ajeti. This murder marks an unfortunate escalation in a continued series of violent attacks and intimidation directed at journalists in Kosovo.

Similarly, on the anniversary of the murder of American journalist Paul Klebnikov, the United States urges the Russian government to continue its investigation of this case and to prosecute the perpetrators to the full extent of the law. Violence against journalists cannot be tolerated, as it has a chilling effect on media freedom.

Of course, freedom of the media depends on the existence of private media to begin with. The United States regrets that the government of Turkmenistan still exerts total control over all radio and television broadcasts and print media, in addition to controlling Internet usage. We deeply regret the recent decision by Turkmen authorities to bar foreign postal services from delivering to Turkmenistan. This measure effectively prevents citizens from reading any newspapers or magazines not published by Turkmenistan's state media.

Finally, Mr. Chairman, the United States recognizes that none of the OSCE's 55 participating States should be immune from the attention of Mr. Haraszi's office. I would therefore like to address the cases of Judith Miller and Matthew Cooper.

The United States has the strongest freedom of expression protections in the world. Freedom of the press is guaranteed in the Bill of Rights to the U.S. Constitution and is protected under U.S. law to a significantly greater degree than is provided for in the International Covenant on Civil and Political Rights. The U.S. courts have a long, distinguished history of protecting freedom of the press.

Every day, numerous journalists in the United States produce stories based on confidential sources, and it is only the most unusual case in which the United States Government has a compelling need to ask for such information.

There is no absolute protection under international law for the confidentiality of sources used by the press, and the United States Supreme Court has never held that the U.S. Constitution grants protection for the confidentiality of press sources.

The Supreme Court, in the landmark case, *Branzburg v. Hayes*, based this conclusion on the principle that society's vital interest in law enforcement can outweigh both the burden on journalists from testifying before a grand jury in a criminal case and the public interest in possible future news about crime.

It is also important to note that, while there is no "reporter's privilege" under U.S. federal law, most states provide some form of this privilege in their state courts.

In this case, the district court found that 1) the information sought from Judith Miller (and the other journalists) was very limited; 2) all available alternative means of obtaining it had been exhausted; and 3) the testimony sought was necessary for the completion of the investigation and was expected to constitute direct evidence of innocence or guilt.

Even a short perusal of the opinion pages in U.S. newspapers shows how much the issue is at the center of a vibrant public debate about how best to balance the media's need to protect confidential sources to ensure the press's role as a provider of transparency and knowledge in a democratic society, and society's vital interest in law enforcement.

Thank you, Mr. Chairman.